



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TRG
Docket No: 1794-99
4 May 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 2 May 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 14 February 1990 at age 20. The record shows that on 15 October 1990 you were disenrolled from Basic Underwater Demolition/Seal training because of the decision of a suitability review board. On 10 November 1990 you reported aboard the USS CORONADO (AGF 11). On 11 December 1990, you received nonjudicial punishment for disobedience and disrespect. The punishment was 30 days in the correctional custody unit (CCU). However, the punishment was subsequently changed to 29 restrictions after you were dropped from CCU.

The comments in the performance evaluation for the period 10 November 1990 to 31 January 1991 state, in part, as follows:

(He) is a very poor sailor. He has repeatedly stated a desire to leave the Navy by any means necessary. Within a few days of reporting aboard he assaulted another member of the Department and began alienating the rest of the Division. Unresponsive to all attempts by Leading Chief, Division Officer and Department Head to find solutions to his problems ... Inability to

work with fellow shipmates ... He refused orders at Correctional Custody Unit and was sent back to the command on the first day. ...

On 14 February 1991 you received another NJP for three instances of disrespect to three different petty officers at the CCU. Subsequently, your appeal of the NJP was denied

Based on the foregoing record, you were processed for an administrative discharge by reason of misconduct due to commission of a serious offense. An administrative discharge board (ADB) met on 5 April 1991 and found that you had committed a serious offense and recommended a general discharge. On 18 April 1991 you were diagnosed with a personality disorder and found unsuitable for service. On 4 June 1991 the commanding officer disagreed with the recommendation of the ADB for a general discharge and recommended discharge under other than honorable conditions. The commanding officer stated, in part, as follows:

... he has willfully chosen a course of action which questions authority and is defiant. (His) poor performance on board is significant and clearly demonstrates his inability to conform. ... His negative attitude and repeatedly stated desire not to be on board or in the Navy, has prevented his superiors from assigning him to any position of trust or responsibility. ... His poor performance should not be honored by separation from the service with a general discharge.

On 14 June 1991 your counsel at the ADB submitted a letter of deficiencies. He contended that the underlying offense was not a serious offense, the record at the ADB improperly referred to the commanding officer's belief that the offense constituted a serious offense, and the commanding officer otherwise improperly influenced the ADB. Your counsel also contended, in effect, that the incident at the CCU was completely blown out of proportion and points that that there was conflicting testimony from CCU personnel.

On 27 June 1991 the discharge authority directed discharge for misconduct with a general discharge. Five days later, the commanding officer endorsed the letter of deficiencies to the effect that none of the allegations had any merit. The commanding officer requested that your discharge be held in abeyance because you were pending a court-martial for disrespect. The letter of deficiencies and the command endorsement are filed in your record as part of the discharge documentation. The next entry in the record showed that on 16 July 1999 you were issued a general discharge by reason of misconduct. At that time you were

not recommended for reenlistment and were assigned an RE-4 reenlistment code.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth, limited education, the letter of deficiency and the case summary of the Naval Discharge Review Board (NDRB) which shows that you have been a good citizen since discharge. The Board also considered your contentions, in effect, that the commanding officer was prejudiced against you and deprived you of your rights. Concerning the 14 February 1991 NJP, you state that you were not allowed to consult with counsel and were not allowed to present witnesses. You contend that the witnesses would have shown that you were not guilty of disrespect at the CCU. In addition, you noted that it is very suspicious that the microfiche page containing the testimony of the defense witnesses at the ADB is missing, because without this testimony you are unable to establish that your discharge was in error.

The Board found that these factors and contentions were not sufficient to warrant recharacterization of your discharge given your nonjudicial punishments for disobedience and disrespect. These offenses are considered to be serious offenses since a punitive discharge would be authorized if convicted of these offenses by a court-martial. The Board was aware that the microfiche page is missing from your service record and was missing when your record was received. However, it is clear that the ADB considered that evidence and concluded that you had committed misconduct. Your appeal of the NJP would have been reviewed outside your command by the general court-martial convening authority and his Staff Judge Advocate. Since your appeal was denied, that review found that you were guilty of the offenses by a preponderance of the evidence. The Board believed that considerable clemency was extended to you when the ADB made a binding recommendation for a general discharge, since a discharge under other than honorable conditions was authorized and could have been recommended. It also appeared to the Board that the contentions in your counsel's letter of deficiency were without merit. The Board concluded that the general discharge by reason of misconduct was proper as issued and no change is warranted.

Regulations require the assignment of an RE-4 reenlistment code when an individual is discharged by reason of misconduct. Since you have been treated no differently than others discharged for that reason, the Board could not find an error or injustice in the assignment of the RE-4 reenlistment code.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director